



## Touro Law Review

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Volume 31 | Number 3

Article 8

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July 2015

### Veteran Treatment Courts

Honorable Robert T. Russell

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#### Recommended Citation

Russell, Honorable Robert T. (2015) "Veteran Treatment Courts," *Touro Law Review*: Vol. 31 : No. 3 , Article 8.

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## VETERANS TREATMENT COURTS

*Honorable Robert T. Russell\**

### I. INTRODUCTION

*The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of early wars were treated and appreciated by our nation.*

—George Washington

The United States has a rapidly growing population of combat veterans returning from the wars in Iraq, Afghanistan and the Global War on Terror. Predictably, these extended wars have produced a significant percentage of veterans with serious mental health and/or substance abuse issues. Many of them are now appearing in our nation's criminal courts, charged with offenses tied, in one way or another, with those service-connected issues. Military service impacts

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\* In January of 2008, Judge Robert Russell created and began presiding over the nation's first "Veterans Treatment Court." Judge Russell's proven results and gifted leadership have contributed greatly to the rapid expansion of the Veterans Treatment Court concept, with over 100 such courts now in operation across the nation in early 2013. Among many notable awards for his work with veterans, the National Veterans of Foreign Wars of the United States has awarded Judge Russell with the "2010 James E. Dan Zandt Citizenship Award." The National Vietnam Veterans of America awarded Judge Russell with its "2010 Achievement Medal."

Prior to creation of the Buffalo Veterans Treatment Court, Judge Russell created Buffalo's Drug Treatment Court in December 1995 and continues to serve as its Presiding Judge. Judge Russell is the Past Chairman of the Board of Directors of the National Association of Drug Court Professionals (NADCP) and the Past President of the New York State Association of Drug Treatment Court Professionals, Inc. He also serves on the National Advisory Board of the Judges' Criminal Justice/Mental Health Leadership Initiative (JLI).

This article was written with the assistance of Catherine A. O'Connor, a student at the University of Minnesota Law School and an Intelligence Sergeant in the United States Marine Corps Reserve, who served in Iraq in 2006. Further, this article was originally published in *The Attorney's Guide to Defending Veterans in Criminal Court* (2014).

the lives of veterans and their families in countless ways. Approximately thirty percent of veterans returning home from combat suffer from “invisible wounds,” injuries that are not visible to the eye and, as a result, often go unrecognized and unacknowledged. These injuries are post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and major depression.<sup>1</sup> The trauma can come from a myriad of sources, whether the impact of a hidden roadside bomb, explosions from mortars, or less obvious sources such as the stress of long deployments and the near-continuous risk of combat that these soldiers face.

Of those suffering, fewer than half seek treatment.<sup>2</sup> Without proper care, these veterans are more prone to destructive actions that bring them into conflict with the law. Many struggle with substance abuse<sup>3</sup> and may come into court with issues ranging from drunk driving, fighting, domestic violence, or worse. These invisible wounds can also lead to longer-term problems for veterans, such as homelessness,<sup>4</sup> unemployment, and strained relationships, further increasing the likelihood they will end up in our criminal justice system.

Veterans Treatment Courts can stem this tide by intervening the moment veterans come into contact with the criminal justice system. By identifying the veterans upon arrest, their needs can be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism, thereby reducing long-term costs for taxpayers and increasing public safety, while helping our veterans lead sober, healthy, and productive lives.

## II. ESTABLISHMENT OF TREATMENT COURTS

The first Veterans Treatment Court in Buffalo, N.Y., evolved from our experience with veterans who participated in either the Buf-

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<sup>1</sup> RAND CORP., *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 44 (Terri Tanielian & Lisa H. Jaycox eds., 2008).

<sup>2</sup> *Id.* at 101,103.

<sup>3</sup> Ismene Petrakis et al., *Substance Use Comorbidity Among Veterans with Posttraumatic Stress Disorder and Other Psychiatric Illness*, 20 AM. J. ADDICTIONS 185, 188 (2011) (“The rates of substance use disorders among those with mental illness ranged from 21-35%.”).

<sup>4</sup> VANESSA WILLIAMSON & ERIN MULHALL, *IRAQ & AFG. VETERANS OF AM., INVISIBLE WOUNDS: PSYCHOLOGICAL AND NEUROLOGICAL INJURIES CONFRONT A NEW GENERATION OF VETERANS* 10 (2009).

falo Drug Treatment Court or the Mental Health Treatment Court or both. We realized over time that veterans needed a different kind of supervision and support, increased collaboration with law enforcement and the Veterans Administration, and speedy identification and referrals of eligible veterans into treatment. We decided to transfer veterans' cases, that traditionally would be sent to the Drug or Mental Health Treatment Courts, to a centralized, singular calendar of all eligible veterans. We hoped this would allow us to focus on the veterans' unique needs and to use vet-to-vet mentoring to help the veterans build and achieve healthy goals.

We established the Nation's first Veterans Treatment Court in Buffalo, New York in January, 2008 after one year of planning. It was successful beyond our expectations. Word quickly spread. Today, the number of Veterans Treatment Courts is growing exponentially. By 2010, there were 24 operational courts in the United States.<sup>5</sup> A year later, the number had grown to 80 and as of mid-2012 there were 97 Veteran Treatment Courts with an additional 200 being planned. The courts are located throughout the United States, from Alaska<sup>6</sup> to Maine,<sup>7</sup> and are even being considered overseas, with proposals of three Veterans Treatment Courts in Great Britain.

#### A. Drug and Mental Health Court Model

Veterans Treatment Courts have only been in existence since 2008, so we do not have any data on their long-term success rates, but there is significant historical evidence that the general treatment court model works. Drug Courts and Mental Health Courts have been shown to reduce crime by an average of 7-14%,<sup>8</sup> and we believe these numbers will also reflect the long-term success of Veterans Treatment Courts.

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<sup>5</sup> Posting of Kate Hoit, *A Second Chance: Veterans Treatment Courts*, VETERANS AFFAIRS BLOG (Mar. 30, 2011, 4:27 PM), <http://www.blogs.va.gov/VAntage/2018/a-second-chance-veterans-treatment-courts>.

<sup>6</sup> *Anchorage Veterans Court*, ALASKA COURT SYS. (May 2014), <http://www.courtrecords.alaska.gov/webdocs/forms/pub-121.pdf>

<sup>7</sup> Donna Brown, *Veterans treatment courts a step forward*, BANGOR DAILY NEWS (Mar. 26, 2012), <http://bangordailynews.com/2012/03/26/opinion/contributors/veterans-treatment-courts-a-step-forward/>.

<sup>8</sup> Sean Clark et al., Practice Commentary, *Development of Veterans Treatment Courts: Local and Legislative Initiatives*, VII DRUG COURT REV. 177 (2010).

### 1. *Drug Courts*

Alternative treatments are not a new phenomenon in the United States. Veterans Courts are built upon the twenty years of experience with Drug Courts. The first Drug Court was started in 1989 and since that time, over 2,300 Drug Courts have been created.<sup>9</sup> These courts target criminal offenders who have drug addiction and dependency problems. In addition, these courts focus on ongoing monitoring of court participants, abstinence, and sanctions to reinforce the court-imposed requirements.<sup>10</sup> The intensive court supervision includes mandatory drug testing, substance-abuse treatment, and other social services as an alternative to adjudication or incarceration.

We decided to base our Veterans Courts in part on the Drug Court model because the Drug Court model has been proven to work.<sup>11</sup> “[T]he majority of studies observed reductions in re-offending among the Drug Court participants relative to the comparison participants,” who were sentenced to traditional correctional options.<sup>12</sup> Within the different models of Drug Courts, those with more strict accountability standards have been more effective than those with looser standards. The key to effective rehabilitative sentencing lies in the accountability of the person that is the subject of the treatment, and the communication between the treatment body and the body maintaining accountability.

The nature of the Drug Court model also appears to affect the court’s effectiveness. Diversion and post-adjudication drug court models that either dismissed charges or expunged a conviction from an offender’s record upon graduation appeared more effective than courts with mixed approaches and no uniform incentive for the completion of the court’s requirements. A clear set of judicial contingencies can increase the amount of treatment received. A Drug Court that uses a single model with a standard incentive structure may be

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<sup>9</sup> *Id.* at 171, 175.

<sup>10</sup> *Id.*

<sup>11</sup> U.S. GOV’T ACCOUNTABILITY OFF., PUB. NO. GAO-12-53, ADULT DRUG COURTS: STUDIES SHOW COURTS REDUCE RECIDIVISM, BUT DOJ COULD ENHANCE FUTURE PERFORMANCE MEASURE REVISION EFFORT 24 (2011) available at <http://www.gao.gov/assets/590/586793.pdf>. The percentages of drug-court program participants re-arrested were lower than those of comparison group members by 6 to 26 percentage points. *See id.* Drug court participants who completed their program had re-arrest rates 12 to 58 percentage points below those of the comparison group. *See id.*

<sup>12</sup> David B. Wilson et al., *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. EXPERIMENTAL CRIMINOLOGY 459, 479 (2006).

more effective in communicating these contingencies and their certainty to the offender.<sup>13</sup> We have used these lessons and have aimed to apply uniform incentives for our Veterans Courts as well.

The punishment and reward system used for all alternative treatment courts is based on adherence to the program. This is known as “operant conditioning” and has four necessary parameters to be successful. The first is certainty. This is the most important factor, and requires that sanctions or rewards be applied every time there is an infraction or achievement. Social scientists express this as a ratio with very concrete policy consequences. “For example, if Drug Court clients are sanctioned every time they fail to attend a treatment session, then the ratio of infractions to sanctions would be 1:1 . . . . [t]he scientific evidence is unambiguous that the smaller the ratio, the more powerful the effects for initiating a new behavior or stopping an old behavior.”<sup>14</sup>

The second parameter is celerity, the temporal immediacy of the sanction or reward upon an infraction or achievement. Studies have shown increased efficacy the more often the drug court meets, as often as bi-weekly for those with the most serious drug history or anti-social predispositions.<sup>15</sup>

The third parameter is magnitude, or the severity of the punishment or the degree of reward offered for each infraction or achievement. Surprisingly, more is not always better. “Evidence reveals that sanctions tend to be least effective at the lowest and highest magnitudes and most effective in the moderate range.”<sup>16</sup> The most successful Drug Courts have been those that have a wide and creative range of punishments and rewards that allow systematic ratcheting of response to participant behavior rather than the simple options of probation or maximum prison time.<sup>17</sup>

The final parameter is fairness of the process, based on the participant’s perception of how the first three parameters are applied. Perception of fairness depends on whether the participants “feel they (a) had a fair opportunity to voice their side of the story, (b) were treated in an equivalent manner to similar people in similar circum-

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<sup>13</sup> *Id.* at 480.

<sup>14</sup> Douglas B. Marlowe, *Strategies for Administering Rewards and Sanctions*, in *DRUG COURTS* 317, 319 (James E. Lessenger & Glade F. Roper eds., 2007).

<sup>15</sup> *Id.* at 321.

<sup>16</sup> *Id.* at 322 (emphasis added).

<sup>17</sup> *Id.* at 322-23.

stances, and (c) were accorded respect and dignity throughout the process.”<sup>18</sup>

Several additional factors have been shown to contribute to the success of drug treatment courts. This includes the amount of communication between the court and the treatment provider and the type of treatment the provider utilizes.<sup>19</sup> Communication between the court and the treatment provider provides tangible benefits because with enhanced supervision, the participant takes the program more seriously.<sup>20</sup> Also, the court can detect failures in the program and the individual’s failures early and can hold all parties accountable and better influence the type of treatment needed for the individual.<sup>21</sup> The type of treatment utilized is also influential, as programs based on cognitive behavioral psychological principles and programs that address criminal thinking directly are more effective compared with other programs.<sup>22</sup> We have benefitted from learning these lessons and from our Drug Courts and incorporated them when creating the Veterans Treatment Court.

## 2. *Mental Health Courts*

Drug Courts opened the door to the creation of Mental Health Treatment Courts, which similarly focus on monitoring participants and connecting participants with treatment services tailored to meet their individual needs.<sup>23</sup> Treatment plans created for participants in these courts must be more individualized and flexible than Drug Courts because of the wide array of mental illnesses.<sup>24</sup> Since many veterans suffer from mental illness as a result of their military service, Veterans Treatment Courts run very much like Mental Health Treatment Courts, with the added support of the VA and veteran mentors.

Like Drug Courts, a Mental Health Court participant is assigned to treatment professionals and a system of sanctions and rewards is available to ensure compliance with the plan, with a focus

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<sup>18</sup> *Id.* at 324.

<sup>19</sup> Wilson et al., *supra* note 12, at 480.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 481.

<sup>23</sup> Clark et al., *supra* note 8, at 176.

<sup>24</sup> *Id.*

on good-faith efforts in treatment sessions. Participants are also assigned a case manager or advocate whose primary objective is to coordinate and supervise the treatment plan.<sup>25</sup> Unlike Drug Courts, where success can be measured simply in length of sobriety, Mental Health Courts either measure the length of time treatment is attended successfully or the threshold levels of stability.<sup>26</sup> This requires closer monitoring and the use of more advanced treatment professionals, such as psychologists, to be able to assess the participant's progress as an individual.

Mental Health Courts have also been very effective at reducing recidivism with those who graduate from the treatment program. For example, the Clark County Court in Nevada has determined that participants were four times less likely to be arrested one year after enrollment in the program compared to the year prior.<sup>27</sup> A study of the San Francisco Mental Health Court found that "the likelihood of mental health court participants being charged with any new crime was about 26% lower . . . and the likelihood of . . . being charged with new *violent* crimes was 55% lower than that of [comparable] individuals who received treatment as usual."<sup>28</sup> A North Carolina study similarly showed that "two years after defendants exit the court, the proportion of defendants rearrested and the mean number of rearrests [was] significantly lower than in the two years before their mental health court entry."<sup>29</sup> The Mental Health Court participants' reduced recidivism two years after graduating from the program shows that the staying power of this treatment is significant even after the participants are removed from the supervision of the treatment court.

After evaluating the successes of Drug Court and Mental Health Courts, it was clear that veterans suffering from substance abuse and mental health issues could be helped by an alternative treatment program. Veterans Courts may prove even more successful than Drug or Mental Health Courts because veterans have the proven

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<sup>25</sup> RICHARD SCHNEIDER, HY BLOOM & MARK HEEREMA, *MENTAL HEALTH COURTS: DECRIMINALIZING THE MENTALLY ILL* 80 (2007).

<sup>26</sup> *Id.* at 83.

<sup>27</sup> RISDON N. SLATE & W. WESLEY JOHNSON, *CRIMINALIZATION OF MENTAL ILLNESS: CRISIS AND OPPORTUNITY FOR THE JUSTICE SYSTEM* 156 (2008).

<sup>28</sup> Dale E. McNiel & Renée L. Binder, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 164 AM. J. PSYCHIATRY 1395, 1401 (2007) (emphasis added).

<sup>29</sup> Virginia A. Hiday & Bradley Ray, *Arrests Two Years after Exiting a Well-Established Mental Health Court*, 61 PSYCHIATRIC SERVS. 463, 467 (2010).



ability to follow directions and lead a law-abiding lifestyle, as proven through their military service. In addition, veterans have a unique brotherhood and sisterhood with other veterans, and the volunteer veteran mentors provide an important network of support to help the veteran succeed in the program—and in life.

## **B. The Buffalo Veterans Treatment Court—Planning and Creation**

Over the years as Operation Iraqi Freedom and Operation Enduring Freedom continued, I noticed more and more veterans were coming through my courtroom, specifically in the Drug and Mental Health Treatment Courts. It became apparent that traditional treatment courts were limited in fully serving the veteran population. Veterans derive from a unique culture and have unique experiences and needs that were not being met. I also noticed that the veterans had positive reactions to the veterans who were working in the court: Jack O'Connor, who served with the Army's 82nd Airborne, and the late Hank Pirowski, who served as a Marine in Vietnam. When I matched a discouraged veteran with veterans O'Connor and Pirowski, right away after a brief meeting the veteran's behavior had totally changed. He stood erect and gave more open responses. That is where we got the idea to set aside a day just for veterans.

### ***1. Building Vital Partnerships***

We initially set up a meeting with the VA hospital in Buffalo to see what assistance it could provide. The hospital agreed to place a Behavioral Health Supervisor and a secure VA computer in the courtroom so veterans could immediately be checked for benefit eligibility and clinical appointments could be made on-site. Subsequently, the VA Benefit Affairs Department also placed a Benefit Specialist in court to provide access for veterans to inquire about benefits earned, or to submit claims for benefits earned based on the veterans' military service. We also joined together with veterans advocates organizations, including Vietnam Veterans of America, Veterans of Foreign Wars, Paralyzed Veterans of America, Order of the Purple Heart, AMVETS, and other organizations including W.N.Y. Veterans Project, the Buffalo Police Department, the Buffalo Veteran's Administration Health Care System, the Buffalo Criminal Courts, the Buffalo Drug and Mental Health Treatment Courts, Erie

County Pre-Trial Services and Court Outreach Unit Referral to Treatment Services (C.O.U.R.T.S. Program). We also recruited mentors, all volunteers and veterans who were dedicated to the support and care of other veterans.

Another important partner is the VA's Veterans Justice Outreach (VJO) Initiative, whose mission is to reach out to the criminal courts at the same time the criminal courts are beginning to reach out to the VA. The VJO program is tasked with educating the legal system, law enforcement, and jails on unique issues facing today's veterans. Once veterans enter the legal system, VJO specialists help them avoid unnecessary incarceration through integration into VA substance and mental health treatment programs.

## **2. *Structure of the Buffalo Veterans Treatment Court***

At the Buffalo Veterans Treatment Court, we created a voluntary program that connects veterans with services that can provide substance abuse, alcoholism and mental health treatment. This treatment is coupled with academic or vocational skills improvement, and active assistance with residential, outpatient and/or transitional services leading to job placement and job retention.

Veterans are identified during the arrest process. The veterans are then assessed for eligibility and referred to the Veterans Treatment Court. Veterans may enter the program at multiple stages of the criminal justice process including pre-disposition, post disposition, and as probation violation cases. Pre-disposition cases are typically dismissed or resolved by a non-criminal disposition upon successful completion of Veterans Treatment Court. Many cases involve veterans who are required to plead guilty to the charges against them but their sentences are stayed pending completion of the program. Upon successful completion, typically they may be allowed to withdraw their plea of guilt and have their charges dismissed or resolved by a non-criminal disposition. Other cases involve participation in Veterans Treatment Court as an alternative to incarceration or resentencing to Veterans Treatment Court as a result of a violation of probation. Upon referral to the court, the veterans are then linked with services that meet their individual needs. A VA liaison works with the veterans to obtain releases of information, facilitate linkage for services, and works with the courts to provide status reports re-

garding the veteran participant's treatment, results of toxicology reports, appointments, case management and, if need-be, crisis management. The Federal Office of Veterans Benefit Affairs also works with the veterans to ensure he or she is receiving pension or disability, if warranted, and works to correct any errors on the veteran's Certificate of Release or Discharge from Active Duty, DD-214, which can affect benefit eligibility. The court's staff and volunteer veteran mentors then assist the veteran with finding an array of stabilization services. This can include obtaining emergency financial assistance, counseling services, employment and skills training, safe housing, and other supportive services. The mentors act as friends to the veteran. They are the participants' coaches and support throughout the process.

During their time in the treatment court, which is typically between 12 and 18 months, participants come in for regular status hearings. Their treatment plans and conditions of treatment are reviewed and adjusted as necessary. Rewards are offered for adherence to court conditions and, if needed, sanctions are given for non-adherence. We do not have a scale or chart for how many chances a participant receives before he or she is removed from the program but, instead, situations are evaluated on a case-by-case basis, and we look at the participant's level of commitment to the program. Individuals taking part in this program are going through challenges of mental health issues or addiction issues or both. The program takes patience and courage on behalf of everyone involved, as well as a great amount of oversight. The sanctions and rewards can work to motivate the participants to stay focused on what they need to do to become and remain healthy and sober.<sup>30</sup> Upon successful completion of the program, many will have their records wiped clean.

### C. Structuring the Veterans Treatment Courts

There are a significant number of factors to consider when determining how to structure a Veterans Court and various current Veterans Courts have used a number of different models. They vary with respect to types of veterans eligible, types of crimes eligible, procedural posture when entering into the program, and results upon completion of the program.

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<sup>30</sup> For more information on the process, see *Judge: Keep Vets Out of Jail* (NPR radio broadcast June 18, 2008), <http://www.npr.org/templates/story/story.php?storyId=91633166>.

### 1. *Eligible Offenses*

With respect to eligibility, the Buffalo court and many others accept all veterans with a clinical diagnosis of serious and persistent mental health disease, or drug or alcohol addiction. We believe all veterans should be eligible because all veterans deserve special consideration for their willingness to serve and defend their nation. Other courts restrict eligibility to only those veterans who, for example, have deployed to a combat zone, qualify for services at the VHA, or have certain mental health or substance abuse diagnoses.<sup>31</sup>

The types of crimes that determine eligibility vary widely, but no Veterans Court accepts very serious violent crimes such as rape or murder. The Buffalo Veterans Treatment Court will hear any non-violent felony or misdemeanor committed by a veteran. These are often charges of driving while intoxicated, theft offenses, or drug possession offenses. Violent offenses are evaluated on a case-by-case basis with the District Attorney's office. For example, some domestic violence-related issues may be eligible for the Veterans Treatment Court where the spouse and other directly-affected family members are asking for help for the veteran. In determining eligibility for these defendants, it is a matter of distinguishing those whose behavior has changed related to their service, compared with those with a predisposition for domestic violence. Symptoms associated with injury from combat such as post-traumatic stress disorder or traumatic brain injury can manifest in outbursts of anger. This is wholly separate from those who commit domestic violence prior to entering the service and then continue after they leave.

Other courts take different routes. The Veterans Treatment Court in Los Angeles, for example, only accepts veterans facing felony charges,<sup>32</sup> and others accept violent offenders with other significant caveats and checks, taking into account such things as the degree of violence, the offender's prior record, and the victim's view.<sup>33</sup> Judge Wendy Lindley of California's Orange County Combat Veterans Court, which accepts violent cases other than murder or sexual

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<sup>31</sup> *Id.*

<sup>32</sup> Nicole Santa Cruz, *O.C.'s Combat Veterans Court Helps Ex-Warriors Fix Their Lives*, L.A. TIMES (Mar. 26, 2012), <http://articles.latimes.com/2012/mar/26/local/la-me-oc-veterans-court-20120326>.

<sup>33</sup> William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, ABA J. (Nov. 1, 2011, 10:10 AM), [http://www.abajournal.com/magazine/article/the\\_battle\\_on\\_the\\_home\\_front\\_special\\_courts\\_turn\\_to\\_vets\\_to\\_help\\_other\\_vets/](http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/).

assault, makes the strong argument that “if our goal is to protect our communities and make them a safer place, then why wouldn’t we take cases of violence?”<sup>34</sup>

## 2. *Incentives*

As mentioned above, the Buffalo court requires many participants to plead guilty and their sentences are stayed pending completion of the program. There is some evidence that requiring a plea of guilty or no-contest often produces better long-term results. The participants do better in the system and graduate more often than individuals who are put into diversionary status.<sup>35</sup> It is a “kind of a stick [because] you know what’s going to happen to you if you don’t do well.”<sup>36</sup> This is consistent with the finding from Drug Courts, discussed above, that the certainty of a sanction or reward is the most important factor in the court’s effectiveness as the veteran-defendant is assured that there is already a conviction that will be levied if he or she fails in the Veterans Court.<sup>37</sup> The difficulty with requiring a guilty plea is that court records on the internet can have long-standing consequences, even if the charge is eventually dismissed. As a result, others believe veterans would be better served in a diversion program, which would have the added benefit of incentivizing participation in the program since some veterans who are given the choice between a long, court-ordered treatment program and a jail sentence will opt for the jail sentence.

The result of successful completion of the veterans treatment program ranges from completely removing the charge from the veteran’s record, as we do in Buffalo, to a case-by-case determination of a more favorable disposition of the case. In California, for example, convictions for crimes of violence and driving while intoxicated remain on the record after graduation whereas in Minnesota participants receive a better disposition in exchange for their cooperation and success in the program. In some cases this might result in a complete dismissal, or a lesser charge.<sup>38</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Marlowe, *supra* note 14, at 319.

<sup>38</sup> *New Minn. Court Handles Vets Accused of Crimes* (NPR radio broadcast May 12, 2010), <http://www.npr.org/templates/story/story.php?storyId=126170654>.

### 3. *Treatment*

No matter which type of Veterans Treatment Court is created, the most important factor is that participants receive the medical and/or psychological care they require and any other assistance they need to stay out of trouble and lead productive lives.

## III. RESULTS AND RECIDIVISM

Jack O'Connor, our mentor coordinator, often says that my role is analogous to that of a commanding officer for the veteran participants and the mentors act much like noncommissioned officers who make sure orders are carried out. Military people have proven through their service that they are comfortable with structure, capable of following directions, and their ability to do so provides yet another reason to give them this opportunity. When participants come in for their periodic status reviews, they share with me not only how their treatment is progressing, but also about their employment, their families, and other updates in their lives. One of the participants even brought in an essay he had written for one of his college classes where he received a 97%. He graciously allowed me to keep the essay, which I have to this day. The importance of these personal connections and the work of the mentors with the participants cannot be overestimated. Mentors are, without a doubt, a large part of the reason Veterans Courts and other treatment courts have been so successful.

As of 2011, there have been 71 graduates of the Veterans Treatment Court in Buffalo and, of those, we have had a zero percent recidivism rate. Similarly, the Veterans Treatment Court in San Jose, founded by my friend, Judge Stephen Manley, has had 72 graduates since it started in 2008 and from those, there have only been a handful of new convictions. Nationally, as of late 2011, early statistics showed that 75% of defendants who finish the program are not rearrested for the next two years.<sup>39</sup> In addition to drastically lowered recidivism rates, graduates of Buffalo's Veterans Treatment Court have experienced drastic, positive life changes. They are clean and sober and actively addressing any mental-health needs. All of them are either employed or pursuing further education. Many have been able to mend strained relationships with family and friends, and those who

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<sup>39</sup> McMichael, *supra* note 33.

were homeless have all been able to attain stable housing.

#### IV. CHALLENGES OF VETERANS COURTS

Veterans Courts are a work in progress. There are several challenges that face the courts, including those who oppose a separate program for veterans, challenges of obtaining funding, and getting through the “warrior mentality” that many veterans have that causes them to be reluctant to admit they have a problem and hesitant to accept treatment.

##### A. Policy Challenges

There will always be those who argue that using a collaborative approach for veterans in the criminal justice system is a “get out of jail free” card. But that is not what Veterans Courts do. They provide an alternative to punishment, mandate treatment and close supervision, and hold the veterans to strict requirements. The result is, hopefully, that public safety is increased, the veteran will not re-offend, and he or she can become a functioning member of society instead of continuing to suffer the invisible wounds of war. The program is by no means a free pass for participants. It is a demanding and difficult program. One veteran in the program in Tulsa, Oklahoma, described the processes he is required to follow in the court as “a very hard program.”<sup>40</sup> He undergoes counseling, works with a volunteer veteran mentor, auto-tests for sobriety three times a day, and regularly attends Alcoholics Anonymous meetings.<sup>41</sup>

Detractors also argue that the Veterans Treatment Courts create two different systems.<sup>42</sup> What we have seen, though, is that problem-solving courts are much better equipped to address the issues of these veterans. Most jails and prisons do not have the appropriate substance abuse, chemical dependency, and mental health treatment programs to help the problems that plague so many veterans in the criminal justice system. The strongest argument, however, comes from the statistics that show these courts help reduce recidivism, and they help participants lead sober, healthy, and productive lives.

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## B. Funding Challenges

All courts have budget constraints that limit the number of programs that can be created. Veterans Courts are a wise use of limited state or local funds because they can work to save taxpayers substantial amounts of money. In addition to helping participants turn their lives around, Drug Courts are proven to save nearly \$27 for every dollar invested.<sup>43</sup> Veterans Courts will likely see similar savings from reducing the amount of money spent to keep inmates locked up, as Drug Courts have done in spending an average of one-tenth as much on treatment compared with imprisonment.<sup>44</sup> This is in addition to the fact that untreated mental health problems and addiction can lead to additional crimes, which even further increase costs.

Some courts have found ways to work around a lack of funding. For example, all of the judges who work in Pennsylvania's Veterans Courts are managing them on top of their current calendar of cases. They, like Buffalo and many other courts, use volunteer mentors to help the effort. For a number of courts, the only federal assistance received is from the VA, which works with the courts to provide mental health treatment, job training and other services.<sup>45</sup>

When addressing funding concerns, perhaps the most important point is that unlike Drug and Mental Health Courts, in which the local jurisdiction is picking up the tab for their participants' treatment, the vast majority of Veterans Court participants receive their treatment through the federally-funded VA system. This factor makes Veterans Courts particularly attractive in an area of shrinking state and local budgets.

The impact of creating a Veterans Court on court budgets will vary depending upon the size of the veteran population the court serves, the specific design and components of the court, and the resources already available or those needed. For example, Buffalo's Veterans Treatment Court did not have any additional funding to implement the program and to operate its first year. The Buffalo court was able to keep costs relatively minimal during that first year by us-

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<sup>43</sup> *Drug Courts Work*, NAT'L ASS'N OF DRUG COURT PROF'LS, <http://www.nadcp.org/learn/facts-and-figures> (last visited Apr. 7, 2015).

<sup>44</sup> Editorial, *Drug Courts Save Lives and Money*, VIRGINIAN-PILOT (Apr. 21, 2009), <http://hamptonroads.com/2009/04/drug-courts-save-lives-and-money>.

<sup>45</sup> *Push for Federal Funding for Veterans Courts Starts in Pennsylvania* (NPR radio broadcast Mar. 26, 2012), <http://wesa.fm/post/push-federal-funding-veterans-courts-starts-pennsylvania>.



ing existing Drug and Mental Health Courts staff and resources that were already funded and available. In addition, the peer-mentor program, which is a major component of Buffalo's Veterans Treatment Court, is staffed completely by volunteers.

Many programs rely in their first year or years on existing funding and resources. Additional resources may be available through the U.S. Department of Justice Adult Drug Court Discretionary Grant Program or a Bureau of Justice Assistance Drug Court grant. The Justice Department's Bureau of Justice Assistance (BJA) provides money for a five-day team training of court officials by the National Drug Court Institute at one of four mentor court sites—Buffalo, Tulsa, and Orange and Santa Clara counties in California. The Substance Abuse and Mental Health Service Administration (SAMHSA) provides funding for the mentor courts' administrative training costs and provides travel stipends for one-day training visits.<sup>46</sup>

The 2010 Veterans Treatment Court Planning Initiative (VTCPI) constitutes the first Veterans Treatment Court training program in the nation. The VTCPI curriculum is a collaborative effort of the BJA, the Department of Veterans Affairs, the National Drug Court Institute (NDCI), and numerous Veterans Treatment Court professionals.<sup>47</sup> VTCPI grants have been awarded to many communities and amounts are based on the communities' veteran populations, problems among these populations, and other factors.

### C. Overcoming the “Warrior Mentality”

The “warrior mentality” is a big obstacle to overcome with respect to the veteran's willingness to seek treatment. Many people who served in the military, especially those from earlier generations, perceive that treatment may be for the weak. We are working to change that paradigm and teach veterans that it takes the courage and strength of a warrior to ask for help. The Veterans Court model provides a community of warriors in which veterans can be comfortable in overcoming this stigma and their service-related mental health or chemical dependency problems.

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<sup>46</sup> McMichael, *supra* note 33.

<sup>47</sup> See *2015 Veterans Treatment Court Planning Initiative*, JUSTICE FOR VETS, <http://www.justiceforvets.org/2015-vtcpi> (last visited Apr. 7, 2015).

## V. FUTURE OF VETERANS COURTS

As legislators see the success of Veterans Courts and courts push for their creations, a number of bills have been introduced at the federal and state level to provide funding for them.

A number of states have passed legislation to promote Veterans Treatment Courts or veterans assistance. Colorado, Illinois, Nevada, Texas, and Virginia are examples of states that have passed legislation calling for the statewide establishment of Veterans Treatment Courts.<sup>48</sup> California, Minnesota, and Oregon are among the states that have passed legislation that permits judges to order treatment, instead of prison, for veterans suffering from combat related mental health disorders.<sup>49</sup>

## VI. CONCLUSION

Alternative treatment programs have clearly been proven to work. As more and more Veterans Treatment Courts are established in the United States, veterans will be able to get the individualized treatment they need to address their post-traumatic stress disorder, traumatic brain injury, depression, and substance abuse issues caused by their service. These programs will keep our veterans out of prison and help them regain or remain productive members of society while in the long run saving money for taxpayers and better-protecting public safety.

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<sup>48</sup> COLO. REV. STAT. ANN. §§ 13-3-101, 13-5-144 (West 2010); ILL. COMP. STAT. ANN. Ch. 730 § 167 (West 2010); TEX. HEALTH & SAFETY CODE ANN. § 617.001 (West 2013) (re-designated as V.T.C.A., GOV. CODE § 124.001); VA. CODE ANN. § 2.2-2001.1 (West 2012).

<sup>49</sup> CAL. PENAL CODE § 1170.9 (West 2015); MINN. STAT. § 609.115, Subd. 10 (2012) (providing for a special process at sentencing if the defendant is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist); OR. REV. STAT. ANN. § 135.886(3) (West 2010).